

EXHIBIT H

BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT ☐ SUPERSEDING

OFFENSE CHARGED

Counts One through Eleven -- Unauthorized Access to a Protected Computer, 18 U.S.C. § 1030(a)(4)
Count Twelve -- Criminal Copyright Infringement, 17 U.S.C. § 506(a)(1)(A) & 18 U.S.C. § 2319(b)(1)

- ☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY:

Per count -- \$500,000 fine or twice the gross gain/loss, 5 years of probation, \$400 special assessment

Name of District Court, or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT

TOMORROWNOW, INC.

DISTRICT COURT NUMBER

CR 11 0642

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Federal Bureau of Investigation

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW
DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE
CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person
Furnishing Information on this form

MELINDA HAAG

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.
Attorney (if assigned)

Kyle F. Waldinger & Susan F. Knight

Name of District Court, or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

CLERK OF U.S. DISTRICT COURT
RICHARD W. WIEGA
NORTHERN DISTRICT OF CALIFORNIA
4:11:34 PM
SBA

DEFENDANT

IS NOT IN CUSTODY

- 1) ☐ Has not been arrested, pending outcome this proceeding.
If not detained give date any prior summons was served on above charges
2) ☐ Is a Fugitive
3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) ☐ On this charge
5) ☐ On another conviction } ☐ Federal ☐ State
6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED
TO U.S. CUSTODY

Month/Day/Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT

Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Date/Time: _____ Before Judge: _____

Comments:

FILED
2011 SE. -8 A 11:34
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

SBA

10 OAKLAND DIVISION

CR 11 0642

11 UNITED STATES OF AMERICA,

No.

12 Plaintiff,

13 v.

14 TOMORROWNOW, INC.,

15 Defendant.

VIOLATIONS: Title 18, United States
Code, Section 1030(a)(4) — Unauthorized
Access to a Protected Computer with Intent
to Defraud and Obtaining Something of
Value; 17 U.S.C. § 506(a)(1)(A) & 18
U.S.C. § 2319(b)(1) — Criminal Copyright
Infringement

OAKLAND VENUE

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18 INFORMATION

19 The United States Attorney charges:

20 BACKGROUND

21 At all times relevant to this Information:

22 1. The defendant TomorrowNow, Inc. ("TomorrowNow") was a company engaged
23 in the business of providing third-party maintenance and support services to business,
24 government, and other organizations that used enterprise software licensed from Oracle
25 Corporation ("Oracle") or one of its related entities, including from Oracle's predecessor
26 companies PeopleSoft, JD Edwards, and Siebel Systems. TomorrowNow maintained its
27 headquarters in Bryan, Texas.

28 2. Oracle was engaged in the business of developing and marketing enterprise

INFORMATION

software. Oracle also offered maintenance and support services to organizations throughout the United States and the world that had licensed its software. This software included products in the Oracle's PeopleSoft, Enterprise One, and World product lines. Oracle maintained its headquarters in Redwood City, California. Oracle also maintained computer servers at a data center in Pleasanton, California, which servers contained some software and related documentation pertaining to certain Oracle product lines. Some of these materials were available to be downloaded over the Internet by Oracle customers. The authority of any particular customer to download materials was governed by Oracle's license agreements with that customer, as well as by the terms of use specified on Oracle-maintained websites.

COUNTS ONE

THROUGH ELEVEN: 18 U.S.C. § 1030(a)(4) — Unauthorized Access to a Protected Computer with Intent to Defraud and Obtaining Something of Value

3. The factual allegations in paragraphs 1 and 2 are re-alleged and incorporated herein as if set forth in full.

4. On or about the dates set forth in the separate counts below, in the Northern District of California, and elsewhere, the defendant,

TOMORROWNOW, INC.,

through its employees and agents, did knowingly and with intent to defraud access a protected computer belonging to Oracle, without authorization and by exceeding authorized access, and by means of such conduct did further the intended fraud and obtain something of value, to wit, Oracle software and related information belonging to Oracle:

COUNT	DATE	ITEMS OBTAINED	CREDENTIALS USED TO GAIN ACCESS
One	12/09/2006	Oracle Enterprise One software in the form of electronic software updates ("ESUs") for U.S. payroll	Oracle customer log-in credentials for SPX Corporation
Two	12/11/2006	Oracle Enterprise One software in the form of electronic software updates for tools applications	Oracle customer log-in credentials for SPX Corporation

COUNT	DATE	ITEMS OBTAINED	CREDENTIALS USED TO GAIN ACCESS
Three	12/13/2006	Oracle Enterprise One software in the form of electronic software updates for real estate management	Oracle customer log-in credentials for Merck & Co., Inc.
Four	12/15/2006	Oracle Enterprise One software in the form of electronic software updates for real estate management	Oracle customer log-in credentials for Merck & Co., Inc.
Five	12/29/2006	Oracle Enterprise One software in the form of electronic software updates for Canadian payroll	Oracle customer log-in credentials for Yazaki North America, Inc.
Six	02/14/2007 to 03/02/2007	Oracle World software fixes in the form of Microsoft Word documents	Oracle customer log-in credentials for Metro Machine Corporation
Seven	02/23/2007	Oracle Enterprise One software action requests	Oracle customer log-in credentials for Merck & Co., Inc.
Eight	03/07/2007	Oracle PeopleSoft software in the form of software updates	Oracle customer log-in credentials for Tropical Shipping USA LLC
Nine	03/07/2007	Oracle World software action requests	Oracle customer log-in credentials for Honeywell International, Inc.
Ten	03/28/2007	Oracle PeopleSoft software in the form of maintenance packs	Oracle customer log-in credentials for Tropical Shipping USA LLC
Eleven	04/10/2007	Oracle PeopleSoft software in the form of a software update	Oracle customer log-in credentials for Tropical Shipping USA LLC

All in violation of Title 18, United States Code, Section 1030(a)(4).

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3 5. The factual allegations in paragraphs 1 and 2 are re-alleged and incorporated
4 herein as if set forth in full.

5 6. Beginning on an unknown date, but by no later than in or about March 2005, and
6 continuing to on or about October 12, 2008, in the Northern District of California, and elsewhere,
7 the defendant,

8 TOMORROWNOW, INC.,

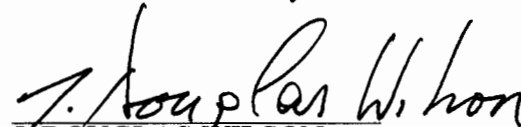
9 through its employees and agents, did willfully, and for the purpose of commercial advantage and
10 private financial gain, infringe the copyrights of copyrighted works, that is, Oracle software, by
11 reproducing, during a 180-day period, at least 10 copies of one or more of those copyrighted
12 works, which had a total retail value of more than \$2,500.

13 All in violation of Title 17, United States Code, Section 506(a)(1)(A) and Title 18, United
14 States Code, Section 2319(b)(1).

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16 DATED:

9/7/11

MELINDA HAAG
United States Attorney

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19 J. DOUGLAS WILSON
20 Deputy Chief, Criminal Division

21 (Approved as to form)


22 AUSA WALDINGER
23 AUSA KNIGHT
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